

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

REALTIME DATA LLC,

Plaintiff,

v.

SILVER PEAK SYSTEMS, INC.,

Defendant.

Case No. 17-cv-02373-PJH

**ORDER RE NOTICE OF PENDENCY  
OF OTHER ACTIONS INVOLVING  
SAME PATENT**

Re: Dkt. No. 105

The court is in receipt of plaintiff's notice, styled as a "Notice of Pendency [sic] of Other Actions Involving Same or Related Patents." Dkt. 105. As the District Court with the lowest-numbered action in the notice, this court hereby directs the Clerk with respect to relating and reassigning the identified actions.

Preliminarily, the court notes that the patent local rules call for a notice of pendency "[w]henever a party knows or learns that actions concerning the same patent have been filed within two years of each other by the same plaintiff." Patent L.R. 2-1(a)(1) (emphasis added). The rule does not call for a notice of actions involving "related" patents, however those might be defined, nor do the patent local rules relate actions concerning "related patents." See Patent L.R. 2-1(a)(1).

**17-cv-03182-EMC**

The patent local rules "deem related" only actions concerning the same patent that are "filed . . . by the same plaintiff." Patent L.R. 2-1(a)(1) & (2). Plaintiff identifies five actions in its notice, four of which were filed by plaintiff "Realtime Data LLC d/b/a IXO" and one of which was filed as a declaratory judgment action by plaintiff "Riverbed

Technology, Inc.” Dkt. 105 at 2. Patent Local Rule 2-1 does not operate to relate actions filed by different plaintiffs—nor does it make exceptions for particular causes of action. As such, Patent Local Rule 2-1(a) does not affect Case No. 17-cv-03182-EMC based on this notice.

**17-cv-02109-SK**

Case No. 17-cv-02109-SK is the lowest-numbered action in the notice. That action is assigned to Magistrate Judge Sallie Kim. The patent local rules specifically contemplate that the lowest-numbered action assigned to a magistrate judge stays with the magistrate when the parties consent in that action, even if related actions are assigned to a District Court judge because the parties declined magistrate judge jurisdiction in those actions. See Patent L.R. 2-1(a)(6). The parties consented to magistrate judge jurisdiction in Case No. 17-cv-02109-SK, so the case shall stay assigned to Judge Kim. See Case No. 17-cv-02109-SK, Dkts. 49–50, 53.

**17-cv-02373-PJH**

One of the parties in Case No. 17-cv-02373-PJH declined magistrate judge jurisdiction. Dkt. 93. As such, the case will not be reassigned to Judge Kim, to whom related Case No. 17-cv-02109-SK is properly assigned. As the lowest-numbered case assigned to a District Court judge, Case No. 17-cv-02373-PJH shall remain assigned to the undersigned.

**18-cv-00574-EMC & 17-cv-06701-EMC**

Case Nos. 18-cv-00574-EMC & 17-cv-06701-EMC are currently assigned to Judge Chen. Case No. 18-cv-00574-EMC concerns patents overlapping with lower-numbered cases assigned to different judges, and it also concerns two patents not at issue in any other case in the notice.<sup>1</sup> SAC at 8, 14, Case No. 18-cv-00574-EMC, Dkt. 52 (asserting patents 9,667,751 & 8,717,203).

Case No. 17-cv-06701-EMC concerns patents overlapping with lower-numbered

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<sup>1</sup> One of the parties declined magistrate judge jurisdiction in the case. Consent or Declination to Magistrate Judge Jurisdiction, Case No. 18-cv-00574-EMC, Dkt. 32.

cases assigned to different judges, and it also concerns a patent overlapping only with Case No. 17-cv-03182-EMC—a lower-numbered case assigned to Judge Chen unaffected by Patent Local Rule 2-1(a). Compare Compl. at 1–3, Case No. 17-cv-03182-EMC, Dkt. 1 (asserting patent 8,717,204) with Compl. at 73, Case No. 17-cv-06701-EMC, Dkt. 1 (asserting patent 8,717,204).

The court also notes that the actions before Judge Chen have progressed further than the other actions listed in the notice, both of which are stayed pending inter partes review. Order, Dkt. 101; Order, Case. No. 17-cv-02109-SK, Dkt. 63. In contrast, the cases before Judge Chen are no longer stayed, and each has a litigation schedule set, including a detailed claim construction schedule. See, e.g., Minute Entry, Case. No. 18-cv-00574-EMC, Dkt. 53.

Because Case No. 17-cv-03182-EMC remains assigned to Judge Chen under the local patent rules, because Case No. 17-cv-06701-EMC is a higher-numbered case with a patent overlapping with Case No. 17-cv-03182-EMC, because a number of patents overlap between Case Nos. 18-cv-00574-EMC & 17-cv-06701-EMC, and because Judge Chen has progressed with the three cases and set litigation schedules in each, the court finds that the principles of this District’s patent local rules are best advanced by the cases numbered 18-cv-00574-EMC & 17-cv-06701-EMC remaining with Judge Chen.

As such, the CLERK IS DIRECTED THAT NO CASE SHALL BE REASSIGNED pursuant to Patent L.R. 2-1(a) based on the information provided in plaintiff’s notice, identical copies of which were filed in the five cases at issue, one of which was docketed at entry 105 of Case Number 17-cv-02373-PJH.

**IT IS SO ORDERED.**

Dated: July 5, 2018



PHYLLIS J. HAMILTON  
United States District Judge